

CONFIDENTIAL

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February 13, 1994

RECEIVED

FEB 14 1994

Mr. William A. Caton, Secretary
FEDERAL COMMUNICATIONS COMMISSION
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Second Reply Comments, MM Docket 93-270

Dear Mr. Caton:

Enclosed please find the Second Reply Comments of Radio Cordele, Inc. in the above captioned Docket. The file date for these Comments is February 14, 1994. Therefore, they are timely filed.

Please have someone in your office forward the Comments to:

Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Additionally, there is an attached copy labeled "Receipt Stamp Copy." Please have someone receipt stamp these and return them in the attached addressed envelope for the Petitioners records.

Thank you for your assistance in getting these Comments filed.

Sincerely,



Paul Reynolds,
Consultant

Enclosure(s)

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BROADCAST CONSULTING AND CONSTRUCTION

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In The Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket 93-270
Table of Allotments,)	
FM Broadcast Stations)	RM-8428
(Cordele, Dawson,)	RM-8429
Montezuma, Leary, Hawkinsville,)	RM-8430
Cusseta, Cuthbert, & Nashville,)	
Georgia))	

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FEB 14 1994

To:
 Chief, Allocations Branch
 Policy and Rules Division
 Mass Media Bureau

FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

SECOND REPLY COMMENTS

BACKGROUND

Radio Cordele, Inc. ("RCI") licensee of WKKN(FM) Cordele, Georgia, and one of the original petitioners in the above captioned proceeding, hereby files its Second Reply Comments. At the close of the Comment Period there were three counterproposals filed. Two of these appeared to be in conflict with the RCI Petition seeking the substitution of channel 236A for channel 252A at Cordele.

Tifton Broadcasting Corporation ("TBC"), licensee of WJYF(FM), Tifton, Georgia, sought to upgrade on channel 237C2 which, using the TBC original coordinates and the WKKN(FM), Cordele, GA licensed site as a reference, was in

conflict with the substitution of channel 236A for channel 252A at Cordele.

Tri-County Broadcasting Company "(Tri-County)", licensee of WCEH(FM) Hawkinsville, Georgia, sought substitutions at Cusseta, Montezuma and Hawkinsville, all Georgia, with the end result that WCEH would operate on channel 236C2 in lieu of its present channel 280C3. This placed the Tri-County Counterproposal in conflict with the allocation of channel 236A at Cordele.

RCI and Dawson Broadcasting Company ("DBC"), licensee of WAZE(FM), Dawson, Georgia, have not been in conflict at any time during the proceeding, in fact their original petitions are interrelated. WAZE cannot use the DBC Option I or Option III without WKKN being reassigned from channel 252A to channel 236A.

At the Reply stage, RCI submitted joint engineering with DBC since DBC's main interest was the substitution of channel 236A for channel 252A at Cordele. This statement demonstrated that there was a conflict between the Tri-County and TBC Counterproposals, but with modification of reference coordinates, the TBC and DBC/RCI scenarios were no longer mutually exclusive. Therefore, the Commission must decide between the RCI/DBC & TBC or Tri-County scenarios. RCI is not opposed to the upgrade of any other properties, as long as those upgrades do not prohibit the substitution of channel 236A for channel 252A at Cordele.

In its Reply Comments, RCI stated that the Tri-County Broadcasting Company Counterproposal proposed a mutually exclusive channel swap between channel 236A at Montezuma and channel 280C3 at Hawkinsville. It was noted that this scenario conflicted with the substitution of channel 236A at Cordele since Tri-County proposed to operate its WCEH on channel 236 as a class C2. In order to allocate channel 236C2 at Hawkinsville, Tri-County proposed a channel swap with the channel 236A allocation at Montezuma, and Montezuma Broadcasting ("MB") filed an expression of interest in the allocation of channel 280C3 at Montezuma. In order to accomplish the Tri-County Counterproposal, 264A had to be substituted for channel 279A at Cusseta and channel 264A at Cuthbert deleted.

The RCI engineering statement, pointed out that the Tri-County Counterproposal was not legally and technically correct at the time of its filing. All counterproposals must have all technical problems corrected before filing and the Tri-County Counterproposal had a short space to the allocation of channel 236C3 at Harlem, Georgia. A CP has been issued to the licensee of WCHZ(FM) Harlem, but according to previous Commission procedure, the allocation coordinates must be protected until an application for license is filed (Form 302) for the CP site. The CP was issued on 12/7/93. No application for license had been filed on the Comment date. Tri-County did not offer any documentation that the licensee of WCHZ was willing to have

its allocation coordinates modified to be the same as its CP site. The Tri-County Counterproposal did not address this issue and was, at the time the counterproposal was filed, therefore technically short spaced to channel 236C3 at Harlem and procedurally incorrect.

However, the fatal flaw in the Tri-County Counterproposal was that it proposed to delete channel 264A at Cuthbert thereby depriving that community of its only full time service. It also appeared that no opportunity for expressions of interest had been given since the previous Cuthbert CP expired and was cancelled nor has an "applications window" been opened. Here again, the Tri-County Counterproposal appeared to be procedurally deficient.

During the Reply Period, Walter McCrary, Jr., an individual in Cuthbert filed Reply Comments and an Expression of Interest in the allocation of channel 264A. He stated that "...the Commission should not deprive a community of 4,340 persons an opportunity to have its first full-time aural service by deleting channel 264A at Cuthbert." He further stated that he, or an entity in which he was a participant, would promptly file an application for construction permit for that channel. Therefore, it changes the priority under which the Commission must make decisions in MM Docket 93-270.

ARGUMENT

Under the present Commission policy it uses an allotment criteria set forth in Revision of FM Policies and Procedures, (1982) when deciding between conflicting proposals. The Section 307(b) mandate for the distribution of various channels are decided as follows:

- (1) First full-time aural service
- (2) Second full-time aural service
- (3) First local Service: and
- (4) Other public interest matters.

[co-equal weight given priorities (2) and (3)]

There are no areas where any pending proposals provide a service under criteria (1) or (2). The RCI Petition does allow a first local service to Leary, Georgia, in the DBC Option I by seeking a change in the city of license of WAZE. Of the DBC Options, Option I is by far the most desirable to DBC, and must be considered as a preference over the Tri-County Counterproposal.

Now that there has been an expression of interest in the vacant allocation of channel 264A at Cuthbert, the Allotment Priorities must considered as follows;

1). Channel 237C2 at Nashville, at the RCI proposed coordinates, do not conflict with the substitution of channel 236A for channel 252A at Cordele when the antenna site for WKKN is relocated to a site given in the RCI Reply

Comments. Therefore, the TBC and RCI/DBC proposals are no longer in conflict and all gains from the two should be considered in tandem. Priority (3) & (4).

2). The channel substitution of 290A or 221A has no conflict at Montezuma. Therefore, channel 236A can be deleted at Montezuma and substituted for channel 252A at Cordele. Since there is presently no operations on the channel at Montezuma, a channel can be substituted without any interruption of service. RCI has agreed to the relocation of its WKKN antenna site for the allocation of channel 236A at a site which does not conflict with the allocation of channel 237C2 at Nashville. This modification of the original RCI/DBC & TBC Counterproposals removes all conflict. See reiteration of RCI statement in these Reply Comments.

3). When the RCI/DBC & TBC conflicts are removed, conflict between these petitioners and Tri-County/MB remains. However, in the most simplified scenario, the real conflict is between an upgrade at Hawkinsville and Montezuma in conflict the allocation of channel 264A at Cuthbert. The allocation of this channel provides this community of 4,340 persons with a first full time aural service. The entire county presently has no local nighttime service. Two engineering firms have been unable to develop a scenario for the substitution of another channel for channel 264A at Cuthbert without including other communities and channels in the "mix." This is not allowable under Commission Rules at

the Reply stage. Therefore, in order for the Tri-County/MB Counterproposal to be considered, Cuthbert must be deprived of its only full time local service. Priority (3) Vs. Priority (4).

RCI AGREEMENT TO RELOCATE

In its Reply Comments RCI agreed to relocate its WKKN transmitter site to a point that allowed the allocation of channel 236A at Cordele and the upgrade of WJYF on channel 237C2. RCI proposed a slight allocation reference change for channel 237C2 at Nashville and a site relocation for WKKN. RCI would like to reiterate its willingness to relocate its present transmitting facility in order to accommodate the allocation of channel 236A at Cordele and channel 237C2 at Nashville.

CONCLUSION

In its most simple form, the outcome of MM Docket must be decided by the Commission between two scenarios, WAZE at Leary and WJYF at Nashville (with the third achievable at WKKN on channel 236C3 by "one step") and the allocation of a channel which provides a new and only full time service at Cuthbert, priority (3) verses the upgrade of two existing stations, WCEH at Hawkinsville, and a class C3 at Montezuma. The Commission can effectuate an end result of three upgrades and a first full time local service versus only two upgrades. It had never been Commission policy to grant

existing service upgrades at the expense of sacrificing new service, especially when that service would provide a community (and entire county) a first full time aural service.

Therefore the RCI Petition, the DBC Counterproposal, Option I, the TBC Counterproposal and the Walter McCrary, Jr. Expression of Interest must prevail. Under the current Allotment Priorities, the Commission can upgrade WJYF(FM), Nashville, Georgia, from channel 237C3 to channel 237C2, upgrade WAZE(FM) to channel 251C3 at Leary, substitute channel 236A for channel 252A at Cordele, and provide the Community of Cuthbert with its first full time aural service by adopting the RCI scenario, with its proposed modifications, combined with the TBC Counterproposal and the DBC Counterproposal, Option I.

CERTIFICATION

I, James W. Jennings, Vice-President of Radio Cordele, Inc., Petitioners for a channel substitution of Channel 236A for Channel 252A at Cordele, Georgia, and the modification of the license of WKKN(FM) accordingly, do hereby verify that the statements contained in these Second Reply Comments in response to Public Notice Report No. 1997, (for MM Docket 93-270) are true and correct to the best of my knowledge and belief. I represent that these Second Reply Comments are not filed for the purpose of impeding, obstructing, or delaying determination on any other application or petition with which it may be in conflict.

Respectfully Submitted,
RADIO CORDELE, INC.

By:


James W. Jennings
Its Vice-President

This 11th Day of February, 1994

Radio Cordele, Inc.
P.O. Box 460
Cordele, Georgia 31015-0460

ENGINEERING STATEMENT

In Support of

SECOND REPLY COMMENTS MM DOCKET 93-270, RM-8323, RM-8428, RM-8429, RM-8430

DAWSON BROADCASTING COMPANY

RADIO CORDELE, INC.

HISTORY

The instant engineering statement is submitted in support of The Second Reply Comments being filed by Dawson Broadcasting Company (DBC) and Radio Cordele, Inc. (RCI) in the above captioned proceeding. Initially in this Docket RCI had petitioned the Commission to allocate channel 236A to Cordele by deleting the assigned Channel 252A (for use by RCI's WKKN) and substituting Channel 290A for Channel 236A at Montezuma, Georgia. This substitution, in turn, allowed Channel 251C3 to be substituted for Channel 251A at Dawson, Georgia.

Three different parties offered counterproposals in the instant proceeding. Dawson Broadcasting Company (DBC), licensee of WAZE(FM) Dawson, Georgia, submitted a counterproposal with three options. Option I requested the deletion of channel 251A at Dawson and the substitution of channel 251C3 at Leary, Georgia, as a first local service. This option sought a site that requested the substitution of channel 236A for channel 252A at Cordele. Option II also requested a deletion of channel 251A at Dawson and the

substitution of channel 251C3 at Leary, but at a restricted site that allowed this allocation without the substitution of channel 236A for channel 252A at Cordele. Option III was the same as its original petition, deleting channel 251A and substituting channel 251C3 at Dawson after channel 236A is substituted for channel 252A at Cordele. All options requested that the license of WAZE Dawson and WKKN be modified accordingly.

Tri-County Broadcasting Company (Tri-County) and Montezuma Broadcasting (MB) submitted a counterproposal that proposed a mutually exclusive channel "swap" that allocated channel 236C2 for channel 280C3 at Hawkinsville, channel 280C3 for channel 236A at Montezuma, channel 264A for channel 279A at Cusseta and deleting channel 264A at Cuthbert. All communities are located in Georgia.

Tifton Broadcasting Corporation, (TBC) licensee of WJYF(FM) Tifton, Georgia, submitter a counterproposal that requested the substitution of channel 237C2 for channel 237C3 at Nashville, Georgia.

The instant Reply Comments still considers the original RCI petition and the DBC Counterproposal, but would also like to address some major points made by two petitioners in counterproposals filed at the end of the Comment Period. The instant DBC/RCI Second Reply Comments are as follows;

A. There is not a conflict between the Tifton Broadcasting Company (TBC) Counterproposal for an upgrade of

WJYF(FM) on channel 237C2 and the substitution of channel 236A for channel 252A at Cordele. It was noted in the DBC/RCI engineering statement at the close of the Reply Period that if RCI relocates its present antenna to study coordinates 32° 02' 50" NL; 83° 52' 29" WL, and channel 237C2 is allocated to Nashville at coordinates 31° 14' 09" NL; 83° 17' 32" WL, both channels can be allocated in keeping with the Commission's minimum distance separation requirements.

B. The substitution of channel 236A for channel 252A at Cordele allows WAZE(FM) Dawson to be upgraded at a site which maximizes its allocation as a first local service at Leary, Georgia, or continue at Dawson as a class C3 at a desirable site (the class C3 at Leary, Option I, is the preferable site).

C. There is no way to resolve to conflict between the allocation of channel 236C2 at Hawkinsville and channels 236A at Cordele or channel 237C2 at Nashville. The distance between TBC's channel 237C2 at its furthestmost point south and Tri-County's channel 236C2 at its furthestmost point north still creates a short space of 11.94 kilometers. Therefore, the gains offered by the TBC Counterproposal, the RCI Petition and the DBC Counterproposal, Option I, must be combined when being compared to the Tri-County/MB Counterproposal. In addition, the loss of service at Cuthbert would of necessity have to be deleted from the Tri-County/MB gains.

D. There are no other channels that can be substituted for channel 264A at Cuthbert. Therefore, in order for the Tri-County/MB Counterproposal to meet the Commission's minimum distance separation requirements, Cuthbert, a community with 4,340 persons must be denied a first full time service.

CONCLUSION

The instant engineering study reiterates that the Tri-County/MB Counterproposal and the RCI Petition/DBC Counterproposal are mutually exclusive and there is no way to reconcile the conflict. However, the RCI/DBC scenario is not mutually exclusive with the TBC Counterproposal when the TBC reference coordinates are modified and WKKN's antenna site is re-located to the reference coordinates requested in Reply Comments Exhibit E, figure 2. This substitution in turn allows for the allocation of channel 251C3 at either Dawson or Leary.

Therefore, when making final decisions on the request of RCI/DBC, TBC and Tri-County, the Commission must consider the gains of upgrades for WJYF Nashville, WAZE Dawson/Leary and the future upgrade of WKKN as opposed to the upgrade of WCEH Hawkinsville and a higher class channel at Montezuma. Additionally, the loss of population served at Cuthbert must be subtracted if channel 264A is deleted.

CERTIFICATION

I, Paul Reynolds, hereby certify the following: that I am an independent broadcast consultant; that I hold a Bachelor of Science degree in Communications from the University of Southern Mississippi and have completed work for a Masters Degree in Communications from the University of Alabama; I have been a practicing consultant since 1980, and I am familiar with the Commission's rules and regulations; I have filed numerous petitions and applications in association with Amerimedia, Inc., and my qualifications are known in the industry and at the Commission; I have been retained by Radio Cordele, Inc., and Dawson Broadcasting Company to prepare this Engineering Statement in support of "Second Reply Comments" in MM Docket 93-270.

All information in this engineering statement was prepared by me or under my direct supervision. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signed


PAUL REYNOLDS, CONSULTANT

THIS 13th DAY OF FEBRUARY, 1994

415 NORTH COLLEGE STREET
GREENVILLE, ALABAMA 36037
(205) 382-8048

CERTIFICATE OF SERVICE

I Paul Reynolds, Consultant to Radio Cordele, Inc. do hereby certify that I have cause to be mailed this 14th Day of February, 1994, a copy of the attached Second Reply Comments to the persons listed below by US mail, first class, postage prepaid.

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